Supreme Court, U.S.
FILED

(1) 97 996 DEC 1 1 1997

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1997

No._____

JAMES W. DEATON

PETITIONER

V.

U.S. DEPARTMENT OF AGRICULTURE

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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8 pp

QUESTIONS

1. Does an Agency-controlled, executive branch-employed Administrative Judge, who is barred by judicial immunity from being sued individually for his actions, have the right to threaten then enforce sanctions against an individual because an individual wants to discuss a valid whistleblowing issue?

2. Does an Agency-controlled, executive branch-employed Administrative Judge, who is barred by judicial immunity from being sued individually for his actions, have the right to enforce sanctions against an individual and allow no valid whistleblowing issues to be discussed because an individual wants to discuss a valid whistleblowing issue concerning the intentional production and intentional release of E. Coli 0157:H7 upon an unsuspecting human population?

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Whistleblower Protection Act. The petitioner respectfully prays for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Federal Circuit is given in the Appendix on pages 2 through 6.

JURISDICTION

The Judgment of the Court of Appeals, Appendix page 7 was entered on August 21, 1997, the Petition for rehearing was denied on September 23, 1997, Appendix page 8. The jurisdiction of this court was supplied me by an information sheet from the U.S. Court of Appeals for The Federal Circuit. I am the petitioner pro se.

STATEMENT OF ISSUE

Prior to the Merit Systems Protection Board hearing, I provided detailed information to the Agency about the alleged whistleblowing disclosure exactly as the Administrative Judge ordered, Appendix page 9.

STATEMENT OF REASONS WHY WRIT OF CERTIORARI BE GRANTED

Under the rights granted me by the Whistleblower Protection Act I had a right to discuss at the hearing the fact that the Agency knowingly and intentionally produces and releases upon unsuspecting people the human pathogen E. Coli 0157:H7 and in particular in Nebraska where the U.S. Meat Animal Research Laboratory is located.

Under the rights granted me by the Whistleblower Protection Act I had a right to discuss at the hearing the fact that a racial assault occurred, the Agency tried to cover-up the fact that a racial assault occurred and the Agency had the EEO complaint process so hidden at the location where it was impossible to determine how to file an EEO complaint.

Because the Agency controlled Administrative Judge imposed sanctions against me, I was not allowed to defend myself under the rights granted me under the Whistleblower Protection Act and the U.S. Court Of Appeals For The Federal Circuit would not correct the situation.

STATEMENT OF THE CASE

According to the June 27, 1996 order, Appendix page 9. I was submitting too much discovery material. The record then shows that I properly and timely filed the prehearing submissions as ordered.

I got into this maze when I refused to conduct nor condone the intentional production and intentional release of Salmonella enteritidis upon unsuspecting people. The Agency demanded that I intentionally

produce and intentionally release as much as 200 pounds daily of Salmonella enteritidis upon the students of Mississippi State University and the residents of Oktibbeha County, Mississippi. That particular project was conducted with taxpayer dollars in Pennsylvania.

The Agency testified that it is an acceptable risk project to intentionally produce and intentionally release Salmonella enteritidis upon an unsuspecting people and it was determined that this disclosure was not protected. Deaton v. U.S. Department of Agriculture, MSPB Docket No. AT-122191WO726 (Oct.8, 1991), aff'd 52 M.S.P.R. 124 (Table), aff'd 979 F. 2d 217 (Fed. Cir. 1992) (Table), cert denied, 507 U.S. 915 (1993). The Administrative Judge and the Agency representative did not believe the ploy of acceptable risk used for Salmonella enteritidis would work again for E. Coli 0157:H7 thus the reason for the sanctions so no discussions could occur concerning the intentional production and intentional release of E. Coli 0157:H7 upon unsuspecting people as the hearing would have demonstrated.

Just prior to my being abruptly locked from my office and work and never allowed to return, I attempted to assist a Wg-5 Animal

Caretaker who had been racially assaulted. The man came to my house practically crying about the racial assault. I also had a critical element in my performance standards which said I could be fired if I tolerated racism and I certainly do not tolerate racism. Because of my stance concerning human pathogen research I was not popular with management anyway. I found that the EEO complaint process and procedure was so hidden at that location that even the prior EEO Counselor stated he did not know how to file a complaint. The Agency then tried to cover-up the racial assault. I reported the issue to the OIG and the record shows that I had a right to discuss this whistleblowing issue at the hearing also. The sanctions the Administrative Judge improperly imposed did not allow me that basic right.

CONCLUSION

The sanctions were imposed so the Agency would not have to discuss their intentional production and intentional release of E. Coli 0157:H7 upon unsuspecting people. The charges against me are simply not true. Discussion of either issue, E. Coli 0157:H7 or the racial

assault, at the hearing would have easily demonstrated the action the Agency took against me was retaliation for whistleblowing. I respectfully want to go back to work.

Also, something should be done concerning the abuse the Administrative Judges and the Merit Systems Protection Board inflicts upon whistleblowers within the federal bureaucracy.

Dated December 1, 1997

James W. Deaton

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